NOTES

WASHINGTON NOTES

THE STEEL-TRUST SUIT
REORGANIZING THE TOBACCO COMPANY
EFFECTS OF TRUST REORGANIZATION
A NEW EMPLOYERS' LIABILITY MEASURE
EXTENDING THE INTERSTATE COMMERCE POWER

Action taken by the Attorney-General of the United States on October 26 in the Federal Circuit Court at Trenton, N.J., opens an important prosecution of the United States Steel Corporation. The petition filed with the United States court at Trenton (Petition. *United States of America* vs. *United States Steel Corporation*) asks for the dissolution of the corporation on the ground that it is an unlawful combination under the Sherman Anti-Trust Law and demands that the court order the breaking-up of the concern, enjoining those who have participated in it against further renewing their efforts. The suit is of unusual importance in the history of the Sherman Anti-Trust Law because it takes a long step beyond any position heretofore assumed by the government. In the Tobacco and Standard Oil cases, the government's plea rested upon illegal and improper modes of competition, such as the obtaining of rebates, the use of oppressive and dishonest business methods, and the like. In handing down decisions in these cases, the Supreme Court held that the mere fact of combination for the restraint of trade was not enough to bring a concern within the prohibitions of the Sherman Law. The combination or restraint must be "unreasonable." If it was thus unreasonable, the mere extent or size of the concern was not important; the corporation must be broken up without reference to such extent or size. In those two cases, the concerns were held unreasonable largely because of the character of the methods they had employed. In the steel-trust suit, the petition before the court alleges no improper methods, but simply bases the complaint upon an alleged effort of the corporation to control prices and establish a monopoly. This control is said to have been effected by various absorptions of independent establishments, and by the use of stock-jobbing methods for the purpose of obtaining the stock of the Tennessee Coal and Iron Company, which was consolidated with the United States Steel Corporation in 1907, as well as by oral agreements or understandings entered into at social meetings

brought about by officers of the United States Steel Corporation. Thus is offered the question whether the use of alleged stock-jobbing methods for the purpose of acquiring control of other concerns, and the making of oral agreements regarding prices, is enough to constitute a concern a monopoly of the kind prohibited by the Sherman Anti-Trust Act. That is to say, the question is raised whether these points are sufficient to make a concern "unreasonable" under that law. The Bureau of Corporations, in its report on the Steel Corporation which has been accepted and published by the President, shows that the United States Steel Corporation is not a monopoly in the usual sense, and that the amount of its production as compared with the total output of the country has declined until it is little more than 50 per cent of the whole. The bureau also shows that the growth and vigor of the independent concerns has in no respect been interfered with by the Steel Corporation, while recent events have demonstrated the power of the independents to cut prices whenever desired. This makes the test now proposed by the Department of Justice for "reasonableness" in the case of the Steel Corporation a very much more difficult and questionable matter than any test that has heretofore been offered. An interesting phase of the suit is found in the fact that, following the analogy of the beef-trust prosecutions of some years ago, it will now be impossible for the Bureau of Corporations or any other government agency to obtain information about the steel business from men engaged in it, without granting them immunity for such illegal acts as they may have committed.

In a decree handed down on November 8 by the Federal Circuit Court for the southern district of New York, the proceedings for the reorganization of the American Tobacco Company are practically closed. An attempt will probably be made by independent interests to secure a revision of this decree in the Supreme Court of the United States, but it is not likely that they will succeed in getting a standing before the court. Even if they do there is no reason to think that the court will consider their claims at all seriously. Attorney-General Wickersham himself is likely to make little further protest. The decree of November 8 may therefore be regarded as practically closing a unique proceeding under the Sherman Anti-Trust Law—the reorganization of a compact and unified concern which had come into control of a great industry. The plan first proposed by the American Tobacco Company for reorganization provided for the establishment of fourteen new corporations—principal and subsidiary—to take the place of the old con-

cern. A certain proportion of business was to be turned over to each of these companies, while there was to be a redistribution of securities to stockholders. By means of a cash assessment upon stockholders, money was to be raised for retiring the bonds of the old American Tobacco Company. Independents complained of this plan when it was proposed to the court, on the ground that it would not restore competition and that the machinery was prepared by it for the renewal of the control exerted by a few "insiders" over the tobacco industry. They requested that a permanent injunction be issued against these insiders, restraining them from enlarging their ownership in the tobacco business and that the number of corporations to be created out of the old concern be very greatly increased. They also urged upon Attorney-General Wickersham that he should recommend to the court a redistribution of the "brands" of tobaccos owned by the American Tobacco Company so that there would be more genuine competition among companies which manufactured brands that were practically substitutes for one another. Other recommendations of a detailed character were made. When Mr. Wickersham filed his exceptions to this plan of the American Tobacco Company for reorganization, he requested that the court give the government power to intervene of its own volition at any time during the next five years in order to secure a restoration of competition by various indicated methods that should seem to be desirable. Further, he asked that not more than 40 per cent of the tobacco business in any particular line be allowed to any given corporation and that the principal individual defendants be enjoined for a time against increasing their control. Still further, it was requested that the stock of the United Cigar Stores—the retailing agency of the trust—should be distributed. In its final decree, the federal court rejects the charge that the tobacco reorganization plan was prepared as a misleading and fictitious scheme of deceit, and expresses the belief that the plan was entirely honest. It denies that it has power either to permit the government to intervene at any time within five years or to order the distribution of stock of the United Cigar Stores. It, however, accepts the suggestion that not more than 40 per cent of the business in any particular line shall be allowed to any of the new companies, enjoins the twenty-nine principal "insiders" from increasing their stock control within the next five years, prohibits loans by any one of the companies to any one of the others, and directs the preservation of the books and accounts of the American Tobacco Company for use in case of future litigation.

The plan for the reorganization of the tobacco trust has undoubtedly aroused more interest and attention in both the financial and the legislative world than anything else that has been done under the Sherman Anti-Trust Law for a great while. The result in the tobacco proceedings is not unnaturally looked to as indicating quite definitely what might be expected in the case of future dissolution of concerns of the same sort. Analysis of the decree in the tobacco case has led both financiers and government experts on tobacco to the belief that there will be little or no change in prices to the consumer as a result of the change in organization. The United Cigar Stores is permitted to continue its operations as heretofore, and there is no reason to believe that there will be any change in the size of the packages of tobacco. Prices of tobacco are regulated in much the same way as the prices of proprietary medicines and are not much subject to competitive change. It is believed that the new plan may result in somewhat broadening and stiffening the market for leaf tobacco, in which case the grower may profit slightly. Such competition as comes about, between the principal concerns resulting from the reorganization, is expected to take the form of increased advertising expenses, extension of the coupon system, etc. Financially stockholders are tolerably well taken care of and there has been very little complaint from them of the terms of the reorganization. If they are about as well off as before, and the monopoly-control over the industry is not materially shaken, there would seem to be little ground for expecting in the tobacco business any future developments very different from those which have taken place in the past. The independent tobacco interests are therefore deeply dissatisfied with the result of a reorganization from which they had hoped much. Their plans, if carried out, would have broken the industry into many very small units, leaving the larger of the present independent concerns about as powerful as any factor in the trade. They would, therefore, have been able to exercise some of the controlling influence that has been exerted by the American Tobacco Company heretofore. Disappointed in this, the independents are now urging that they, under the Sherman Law, have no means of getting redress for the injury suffered by them from the aggressions of the trust. They consequently desire the amendment of the Sherman Anti-Trust Law in such a way as to allow independent concerns to intervene at any time and obtain damages for such harm as may have been inflicted upon them by unreasonable restraints of trade. In the tobacco case, they were not able to get any recognized or definite status before the court, although they consider themselves

as being, in an important sense, the real parties in interest. A measure which appears to receive the general approval of the independents is the La Follette amendment to the Sherman Anti-Trust Law which proposes a method of giving independent competitive interests a certain right of action in proceedings under the law. It is probable that this phase of the trust situation, now brought into prominence by the outcome of the American Tobacco Company case, will receive much attention in Congress during the coming winter. Along with it is likely to go a series of other proposed changes in the anti-trust law designed to clarify the measure at various points and to strengthen its provisions as well as broaden them. President Taft is understood not to approve changes in the law.

On October 25 the Federal Commission on Employers' Liability and Workmen's Compensation, which has been deliberating upon the terms of a measure to be presented to Congress, concluded its preliminary investigations and made public an outline of a tentative plan for employers' liability legislation. This plan was in the form of a series of propositions, the most important of which were as follows:

1. The law to provide for payment of compensation by interstate carriers engaged in interstate transportation to employees sustaining injury by accident while engaged in such transportation, except in cases of wilful misconduct to be hereafter specified.

2. The compensation to be paid by the employer directly, and not out of a general fund created by any form of taxation.

3. The law to be in form compulsory, and not subject to election by either employer or employee.

4. The remedy provided by such law to be exclusive of any common law or other statutory remedy.

5. The law to apply to all accidents resulting to the employee while in the course of his employment, except those where the disability continues for a period of two weeks or less, the employer, however, to furnish medical and surgical assistance to an amount not exceeding $200.

6. Payments of compensation under the law to be made periodically, and not in lump sums, with, however, appropriate provision for commutation at any time after the lapse of six months on the application of either party.

7. The amount of payments to be limited to a minimum and maximum sum, and not to continue beyond a specified term of years, to be hereafter fixed. The question as to whether or not this limitation shall apply to permanent total disability is left open.

8. The amount of all payments to be based upon a percentage, hereafter to be fixed, of wages received by the injured employee at the time of his injury.

9. All claims arising under the law to be nonassignable and exempt from levy.

10. In case of death, payments to be made to dependents, including alien dependents.

11. All claims under the law to be made preferred liens.

12. Whenever any railway company and its employees have agreed or shall hereafter agree upon a plan of compensation which is as favorable to the employees as the provisions of this law, such plan may be substituted for the law, provided that wherever in any such plan the employees contribute to the compensation fund, the plan shall contain beneficial provisions in addition to the schedule of payments, equivalent to such contribution.

Notice of the intentions of the commission having been generally sent out, hearings on the subject were undertaken on November 6 and continued to and including the 10th. Representatives of labor and capital were heard. In general, the plan proposed by the commission has proven acceptable to both sides; the only criticism of general character upon it proceeding from manufacturers who desired that it should be extended if possible to take in concerns other than interstate railways. This was on the ground that general manufacturing interests are now subject to constant annoyance as a result of conflicting legislation in the several states. It was therefore urged that, so far as the constitutional power of Congress could be held to extend, legislation should be applied. Great difference of opinion was, however, expressed as to the details of the measure. In general, railroad representatives desired that the acceptance of the system should be elective instead of compulsory and that, in formulating a schedule of rates of compensation, care should be taken not to exceed a probable cost about equal in the aggregate to the cost at present incurred by the roads as a result of settlements and judgments in the courts. Labor men demanded that the schedules be fixed somewhat on the basis employed in foreign countries and without primary reference to the cost inflicted on the roads; the latter being left to recover from the public by higher rates. During the hearings, an important compilation of the actual experience of 250 railroads in paying settlements and judgments over a three-year period was made public, this being the first collection of data of the kind complied for American roads. The showing indicated for the years 1908–10 an average payment of $1,201 for death, $4,205 for total permanent disability, $1,421 for permanent partial disability, and $76 for temporary disability where settlement was made, such settlements including the vast majority of cases. The returns indicated very much larger

recoveries through judgments in the courts in the case of death or serious injury than through settlements between the roads and the injured persons.

In the opinion handed down on October 30 in the case of *Southern Railway Co.* vs. *The United States* (No. 28, October term, 1911), the Supreme Court of the United States has taken a new position with respect to the definition of interstate carriers that is likely to lead to some important results. The case in question related to the use of safety appliances under the national safety-appliance act. In moving a trainload of freight from one point in the state of Alabama to another point in the same state, the Southern Railway employed one or more cars that were not equipped with safety appliances in accordance with the act of Congress. When suit was brought, the contention of the railway was that it was not subject to the act in question because it was moving goods entirely in traffic between two points in the same state. The Supreme Court now affirms the decision of the lower court to the effect that the railway was actually subject to the terms of the Federal Safety-Appliance Act, and much of its decision is devoted to a discussion of the scope of the power of Congress in regulating the affairs of railroads engaged in interstate and intrastate traffic. It reaches the conclusion that the act in question—and the power of Congress— "embraces every train on a railroad which is a highway of interstate commerce without regard to the class of traffic which the moving cars are." In answering the question "Is there a real or substantial relation . . . . between what is required by these acts in respect of vehicles used in moving intrastate traffic and the object which the acts obviously are designed to obtain, namely, the safety of interstate commerce and of those who are employed in its movement," the court says: "Congress possesses . . . . power to regulate interstate commerce which is plenary, and competently may be exerted to secure the safety of the persons and property transported therein and of those who are employed in such transportation, no matter what may be the source of the dangers which threaten it." This lays the foundation for a very large extension of the interstate commerce power should Congress care to act upon the authority thus recognized.